

NOV 8 1968

JOHN F. DAVIS, CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1968

No. 620

JAMES L. MOORE, et al.,

Plaintiffs-Appellants,

vs.

**SAMUEL SHAPIRO, Individually and as Governor of the
State of Illinois, et al.,**

Defendants-Appellees.

(Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.)

MOTION TO DISMISS

WILLIAM G. CLARK,

Attorney General of the State of Illinois,
180 North La Salle Street, Suite 900,
Chicago, Illinois 60601 (346-2000).

Counsel for Defendants-Appellees.

JOHN J. O'TOOLE,

THOMAS E. BRANNIGAN,

Assistant Attorneys General of Illinois,

Of Counsel.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1968

No. 620

JAMES L. MOORE, et al.,

Plaintiffs-Appellants,

vs.

SAMUEL SHAPIRO, Individually and as Governor of the
State of Illinois, et al.,

Defendants-Appellees.

(Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.)

MOTION TO DISMISS

Defendants Samuel Shapiro, Governor, Paul Powell, Secretary of State, Michael J. Howlett, Auditor of Public Accounts, Adlai E. Stevenson, III, Treasurer, William G. Clark, Attorney General, James A. Ronan, Chairman of the State Democratic Central Committee, and Victor L. Smith, Chairman of the State Republican Central Committee, by their attorney, William G. Clark, Attorney General of the State of Illinois, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move the Court to dismiss the appeal for the reasons set forth herein.

ARGUMENT**I.****THE APPEAL SHOULD BE DISMISSED BECAUSE OF THE IMPOSSIBILITY OF GRANTING ANY RELIEF.**

Plaintiffs-Appellants, twenty-six independent candidates for the office of Presidential Electors from the State of Illinois, brought suit in the District Court to challenge the validity of Section 3 of Article 10 of the Illinois Election Code. (Ill. Rev. Stat., 1967, Chap. 46, Sec. 10-3). They sought a declaration that the statute was unconstitutional; that the action of the State Electoral Board in refusing to certify their names for a place on the Illinois ballot was null and void; and a preliminary and permanent injunction enjoining defendants-appellants from declining or refusing to certify their names as candidates for purposes of the November 5, 1968 election.

The General Election of November 5, 1968 has been held. At this election, electors for the offices of President and Vice-President of the United States for the State of Illinois were selected pursuant to Illinois law. Therefore, this appeal should be dismissed because of the impossibility of granting any relief to plaintiffs-appellants.

II.**THE DISTRICT COURT PROPERLY DISMISSED THE COMPLAINT.**

In *MacDougall v. Green*, 335 U.S. 281 (1948), this Court held constitutional the same statutory requirement, chal-

lenged by plaintiffs-appellants, as applied to nominating candidates representative of a new political party.

What is challenged here is the Illinois requirement of a showing of statewide support for those seeking access to the Illinois presidential ballot by way of independent nominating petition. *MacDougall* stands for the proposition that a State may require that candidates for statewide office should have support not limited to a concentrated locality, (335 U.S., at 283) and that Illinois' method of demonstrating that support is reasonable.

The District Court properly concluded that the population distribution in Illinois had not changed significantly since 1948, and that *MacDougall* stands as a valid precedent on the question raised in this cause.

CONCLUSION

For the above reasons, defendants-appellees respectfully submit that this appeal should be dismissed.

Respectfully submitted,

WILLIAM G. CLARK,

Attorney General of the State of Illinois,
160 North La Salle Street, Suite 900,
Chicago, Illinois 60601 (346-2000).

Counsel for Defendants-Appellees.

JOHN J. O'TOOLE,

THOMAS E. BRANNIGAN,

Assistant Attorneys General of Illinois,

Of Counsel.